1953

Bacle D. Taylor v. E. M. Boyle Corporation : Brief of Respondents

Utah Supreme Court

In the Supreme Court of the State of Utah

BACLE D. TAYLOR,
Plaintiff and Respondent,

vs.

E. M. ROYLE CORPORATION,
a corporation,
Defendant and Appellant.

CASE NO. 8028

RESPONDENT'S BRIEF

Appeal from the Fourth Judicial District Court of the State of Utah, Hon. Joseph E. Nelson, Judge.

MAURICE HARDING,
Attorney for Respondent

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Attorney for Defendant
and Appellant

NEW CENTURY PRINTING CO., PROVO, UTAH

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BRIEF OF RESPONDENT

While in the main the Statement of Facts contained in appellant's brief are correct, there are a few of such statements which are not, as we read the evidence, supported by any competent testimony, but are contrary to the evidence. There are also some facts established by the evidence which we deem material to the issues here involved which are not mentioned in appellant's Statement of Facts.

ADDITIONAL STATEMENT OF FACTS

It is said on Page 2 of appellant's brief that "appellant denied there was a new contract between the parties and

stated the old contract continued, while negotiations were proceeding toward the formation of a new contract."

In connection with the above quoted statement, we should like to quote the appellant's testimony, which will be found in the Transcript, Pages 6, and 15 to 18:

> Q. "Do you recall testifying in the city court, in which you stated that you told Mr. Taylor in February, of 1951, that you would have to change the contract commencing March 1, 1951:"
>
> A. "Yes sir."
>
> Q. "And did you have a conversation with him in February, of 1951, wherein you told him that the contract that was then in existence, which would terminate February 28th, would have to be changed commencing March 1st of that year?"
>
> A. "Yes. In substance and effect I conveyed that thought to him. Not exactly in the language you outlined, but that's the direction in which my mind was travelling." (Tr. P. 6)
>
> Q. "Now the situation then on March 1, 1951, was that Mr. Taylor was in your employ, that you owed him $2,358.00 thereabouts for bonus, and you had told him in February that the contract for the new year starting March 1, 1951, would have to be the subject of an agreement? That's right, is it not?"
>
> A. "Yes. That we'd have to go over the situation."
>
> Q. "So on March 1, 1951, at the commencement of a new contract year, he had no definite contract with you?" (Tr. P. 15)
>
> A. "Except that we had been following in days past."
>
> Q. "Well, you had told him, had you not, that had to be revised?"
>
> A. "That would be correct, yes."

Q. "And I think you told us at the preceding hearing that it was your intention to revise it downward?"

A. "I had served notice in substance and effect that a realignment of the contract was in my thinking necessary, yes. It would have to be changed, that's correct."

Q. "Did you discuss with him any of the changes that you would make? Before March 1, 1951?

A. "Well, yes, we did. It seems in my memory, if I recall correctly. At that time we may not have gone into it too far, we may have canvassed it slightly, we had worked together so long and understood so well, that it wasn't necessary for a great deal to be said, but in April or May we got down to the business of getting serious on the thing, and talking about the issues, and on May 13th, or the 11th, about there, I wrote Mr. Taylor a letter relevant to a conversation we had had a few days before, discussing the pertinent facts, or the new contract."

Q. "You say, relative to a letter, you had a discussion a few days before May 11th?"

A. "That's right."

Q. "Mr. Royle, I show you what has been marked for identification as plaintiff's Exhibit "F", and I'll ask you whether or not that is a letter that you, as manager of the Royle Corporation, and defendant herein, wrote to Mr. Taylor, the plaintiff?"

A. "Yes, that's the one that was written. It's my signature on it."

Q. "Now in this letter you say: 'On the question of the coming year for salary etc., I expect a larger run than this year, somewhere between $75,000.00 and $100,000.00', do you not?' "

A. "If it's expressed there then I wrote it."

Q. "And you say: 'I cannot see the $5.00 per set and a 10% on the first $30,000.00 under prevailing conditions.' You say that in the letter?"

A. "Yes. We were in a depressed market at that time."

Q. You also say: 'I will be down in a few days and see you. These are some ideas we might talk over."?

A. "That's right." (Tr. P. 17)

Q. "Did you come down a few days later and talk with him about it?"

A. "I was down almost every week, and if the subject were neglected that time we caught it the next time. The contract between Mr. Taylor and myself was sometimes several months in the course of bringing together. No great hurry about it seemingly on either side."

Q. "Then when you would get together from time to time it would relate back to the beginning of your contract year, would it not?"

A. "Yes." (Tr. P. 17)

Q. "That is March 1st?"

A. "That's right." (Tr. P. 18)

As to the statement near the bottom of Page 2 of appellant's brief that "appellant paid and respondent accepted without protest, question or objections, compensation on the same terms and amounts as during the previous year," we should like to quote the appellant's testimony as follows:

A. . . . . (Line 9) "but we followed the basis of a $30,000.00 volume, against which Mr. Taylor drew $250.00 per month salary, or a rate of 10% on the first $30,000.00. In addition to this 10% on the first $30,000.00 he had this $5.00 per set bonus, and then anything over $30,000.00 in the year an additional 7% was to be paid. That's my recollection." (Tr. P. 5)

Q. "Mr. Royle, during the period from March 1, 1951, until Mr. Taylor left your employment, you were paying him on the basis of the $250.00 a month, at the

old schedule? I think that's what you indicated; is that correct?"

A. "That would be correct."

Q. "And that was the basis on which you preceeded during the spring of 1951?"

A. "That's correct." (Tr. P. 30)

Q. (Tr. Page 36, Line 26) "Mrs Royle, can you turn to the sales record and tell us how many unit sales there were during the months of March, April, May, June and July? By months?"

A. "That's of 1951?"

Q. "Yes."

A. "I have 29 units. More than that were reported, but there were some repossessions. We pulled those out."

Q. "Can you tell me how many by months?"

A. "In March I have 14. 7 in April. 5 in May. 2 in June. 1 in July." (Tr. P. 37)

From the testimony of respondent, Transcript Page 44:

Q. "What did he say about paying you?"

A. "Said it should be paid at the old rate until this was settled, but you can see he didn't follow through on the old rate."

The above testimony is quoted for the purpose of showing what the agreement from March 1, 1950 to February 28, 1951 was; that respondent was paid at the rate of $250.00 each month from March 1, 1951 to July 13, 1951, pending the consummation of a new agreement; that he made 29 unit sales during the period from March 1, 1951 to July 13, 1951, entitling him to bonus payments of $5.00 each, if the prior year's contract were extended; and the record does not show he was paid the $5.00 per unit bonus.

While the transcript is silent on the matter, with the exception of the respondent's statement that "he didn't

follow through on the old rate," in fairness it must be stated that the respondent was paid on all unit sales for the months of March, April, and May, 1951, but was not paid on such sales for June and July, 1951.

STATEMENT OF POINTS RELIED UPON TO SUSTAIN JUDGMENT

1. RESPONDENT USED THE SHORT FORM OF COMPLAINT WHICH WOULD SUPPORT A JUDGMENT ON EITHER EXPRESS OR IMPLIED CONTRACT. THE QUESTIONS OF EXPRESS AND IMPLIED CONTRACTS WERE BOTH BEFORE THE COURT.

2. THE EVIDENCE IS SUFFICIENT TO SUPPORT THE FINDINGS OF FACT THAT RESPONDENT IS ENTITLED TO RECOVER ON THE BASIS OF QUANTUM MERUIT.

ARGUMENT

POINT 1

RESPONDENT USED THE SHORT FORM OF COMPLAINT WHICH WOULD SUPPORT A JUDGMENT ON EITHER EXPRESS OR IMPLIED CONTRACT. THE QUESTIONS OF EXPRESS AND IMPLIED CONTRACTS WERE BOTH BEFORE THE COURT.

Respondent commenced this action in the City Court of Provo City, using the short form of complaint. The items in the account attached to the complaint were based on both express and implied contracts, three of such items being admitted. It was respondent's contention that he had made an express oral contract with the appellant for services for the year March 1, 1951 to February 29th, 1952, and that

was the theory upon which the case was tried in the City Court, resulting in the court finding there had been an express contract, as respondent claimed, and awarding judgment accordingly.

Upon the hearing of the case on appeal to the District Court, the respondent's main theory was that he had an express contract with appellant for his services, but he also offered evidence, which was received, showing the reasonable value of his services. The court found there was no express contract, nor a continuation of the prior year's contract, but that respondent was entitled to recover on quantum meriut, and gave judgment on that basis.

In this case there is no question whatever that respondent performed the services for appellant from March 1, 1951 to July 13th, 1951; that appellant accepted the services; that the services were offered with the expectation of compensation; and that compensation to respondent for such services at the rate of $5,000.00 per year was not unreasonable.

> "Where a person, with reasonable opportunity to reject offered services, takes the benefit of them under circumstances which would indicate, to a reasonable man, that they were offered with the expectation of compensation, a contract, complete with mutual assent, results. 1 Restatement, Contracts ¶72 (1) (a)." Jones v. Brisbin, (Wash) 247 P. 2d 891.

As to whether or not the complaint is sufficient to support the Judgment, we should like to cite Rule 54 (c) (1) U. C. P. R.:

> "Generally. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor

it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves."

In the case of Hawkins v. Frick-Reid Supply Corp., C. C. A. Tex. 1946,154 F. 2d 88, the court said:

"A complaint is sufficient if it sets forth facts which show that the plaintiff is entitled to any relief which the court can grant, since every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."

And in the case of Gins v. Mauser Plumbing Supply Co., C. C. A. N. Y. 1945, 148 F. 2d, 974, the court said:

"The demand for judgment loses its restrictive nature when the parties are at issue, for particular legal theories of counsel yield to the court's duty to grant the relief to which the prevailing party is entitled, whether demanded or not."

In the case of Gledhill v. Malouf, 58 Utah 105, 197 Pac. 725, our court said (quoting from Pages 111 and 112):

"No fault is to be found with the doctrine announced by the cases and authorities relied on by plaintiffs. They state the general rule to be adhered to in both law and equity cases that the findings must be responsive to and within the issues created by the pleadings. It does not necessarily follow, however, that the rule should be applied in every case where both parties to a particular transaction fail to properly interpret and allege or set forth their legal relationship and their

rights under it. In many cases the courts are called upon to, and frequently do, adjudicate and determine the rights of the respective parties before them contrary to the theories of both litigants. In the case at bar, as has been seen, both plaintiffs and the defendant pleaded that an oral agreement had been entered into with respect to the purchase and sale of lands. True, as it frequently happens, they materially differed as to the exact terms and conditions of the contract as well as their rights under it. However, they both pleaded that they entered into it and acted upon it. Having done so, some legal relationship between them had been formed, and the court was, under the issues joined, called upon and had the right to determine their legal status and rights under the contract."

We feel, however, that we need to cite no other authority for our position than Morris v. Russell, (Utah) 236 P. 2d 451. Quoting from Pages 454 and 455:

"Plaintiff, however, refers us to Rule 54(c) (1), U. R. C. P., from which we have heretofore quoted the applicable part, and which provides that every final judgment shall grant the relief to which a party is entitled even if such relief has not been asked for in the pleadings.

"Thus, apparently, if the plaintiff proved he was entitled to relief in quantum meruit, it would have been error for the trial court to refuse him that relief even though at an earlier time in the proceedings the court had dismissed the quantum meruit count. Cases decided under the Federal Rules of Civil Procedure, 28 U. S. C. A., from which the rule was taken, illustrate that this is true. (Citing cases)

"The adding of the quantum meruit count, was the equivalent of permitting an amendment to conform

to the proof. The defendants were in no worse position than if the quantum meruit count had not been there in the first place."

POINT 2

THE EVIDENCE IS SUFFICIENT TO SUPPORT THE FINDINGS OF FACT THAT RESPONDENT IS ENTITLED TO RECOVER ON THE BASIS OF QUANTUM MERUIT.

The testimony of appellant shows that respondent's earnings in his capacity as salesman and manager for appellant during the period of March 1, 1950 to February 28, 1951, were $6,278.91, and that appellant didn't consider such amount unreasonable. He also stated that he didn't consider $5,000.00 per year guaranteed salary unreasonable (Tr. P. 26) for respondent's services.

In view of the appellant's statements, it seems the court had ample evidence as to reasonable value of the services rendered. The fact that respondent did not give any testimony regarding the reasonable value of his services is immaterial. Surely, a party is entitled to make his case on any evidence available, including his adversary's testimony, if he is able to do so.

Appellant contends that the prior year's contract was continued during the period in question, and in this regard, we are mindful of the rule stated in 35 Am. Jur. Pages 497-498, Section 65, Master and Servant:

> "Most authorities hold, in accord with the general rule that a servant continuing in the master's service after the expiration of a definite term is prima facie presumed to continue under the terms of the old contract, that there is an implied agreement that the em-

ployer will continue to pay the employee the remuneration specified in the original contract. In support of this rule it is said that if the employee remains in the same employment after his term of service has expired without making demand for increased pay, the employer may well presume that no increased compensation is expected or will be required. This presumption is rebuttable by proof that a new contract for the continued period has been entered into, or of facts and circumstances showing that the parties did not intend to continue upon the terms and conditions of the original one, ..."

We acknowledge that if the respondent had continued in appellant's service after the expiration of the prior year's contract, with nothing being said or done about changing the terms of such contract, that the old contract would be presumed to continue. However, in the presence of the positive statements of appellant that he had told respondent in February, 1951, that the old contract would have to be changed commencing March 1, of that year, even with no definite notice of what the changes would be or the extent thereof, we cannot understand how the presumption of continuance would apply. Therefore, the court had ample evidence for its finding that the old contract had been terminated, and respondent was working on an implied contract only.

It should be borne in mind that the $250.00 per month paid to respondent under the contract of March 1, 1950 to February 28, 1951, was not salary in the sense that it was full compensation for services rendered from month to month during such period. Appellant testified that the $250.00 was a drawing account (Tr. 7). Neither was the proposed $5,000.00 per year to be considered as salary in

the sense that it was to be full compensation for services rendered; it also was a drawing account (Tr. 24-30). The word "salary" was used very loosely by the parties to refer to a "drawing account" and also as "wages." (Tr. 25-26) (Exhibit A).

CONCLUSION

It seems to us that the respondent is entitled to recover for his services from March 1, 1951 to July 13, 1951 on one of three theories:

(a) An express new contract for the year commencing March 1, 1951; (which the court held had not been consummated)

(b) A continuation of the prior year's contract; (which the court held had been terminated)

(c) Quantum meruit. (Upon which theory the court gave judgment)

We submit, therefore, that the judgment appealed from should be affirmed.

Respectfully submitted,

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